



# Department of Justice

**STATEMENT**

**OF**

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CHIEF PRIVACY AND CIVIL LIBERTIES OFFICER**

**BEFORE THE**

**SUBCOMMITTEE ON COMMERICAL AND ADMINISTRATIVE LAW  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**CONCERNING**

**THE PRIVACY AND CIVIL LIBERTIES OFFICE**

**PRESENTED ON**

**MAY 17, 2006**

Mr. Chairman and Members of the Subcommittee: Thank you for inviting me to testify regarding the Privacy and Civil Liberties Office in connection with the Committee's hearing.

## **I. THE CHIEF PRIVACY AND CIVIL LIBERTIES OFFICER**

In February 2006, the Department created a senior position in the Office of the Deputy Attorney General for a new official who will serve as the Department's Chief Privacy and Civil Liberties Officer. DOJ was well into the hiring process for this position in January when Congress passed the Department of Justice Reauthorization Act of 2005 calling for the Attorney General to designate a senior official in the Department of Justice to assume primary responsibility for privacy policy. The Act provided that the responsibilities of such official shall include advising the Attorney General regarding (1) appropriate privacy protections, relating to the collection, storage, use, disclosure, and security of personally identifiable information, with respect to the Department's existing or proposed information technology and information systems; (2) privacy implications of legislative and regulatory proposals affecting the Department and involving the collection, storage, use, disclosure, and security of personally identifiable information; (3) implementation of policies and procedures, including appropriate training and auditing, to ensure the Department's compliance with privacy-related laws and policies, including the Privacy Act and the E-Government Act of 2002; (4) ensuring that adequate resources and staff are devoted to meeting the Department's privacy-related functions and obligations; (5) appropriate notifications regarding the Department's privacy policies and privacy-related inquiry and complaint procedures; and (6) privacy-related reports from the Department to Congress and the President.

After much discussion within the Department, the decision was made to combine the information privacy and civil liberties protection responsibilities into one position. This is a combination that the Department believes makes sense operationally. I started at the DOJ as the Chief Privacy and Civil Liberties Officer on February 21, 2006. As the Chief Privacy and Civil Liberties Officer, I am responsible for Department wide protection of privacy and civil liberties.

I think it might be helpful to you for me to provide you with a little of my background. Prior to my appointment at DOJ, I started the Washington, D.C. office of Privacy Laws & Business, a privacy consulting firm based in the United Kingdom. My responsibilities focused on advising U.S. companies on conducting their business in Europe in light of the EU Data Protection Directive. I spent six years at America Online, Inc. where I was Assistant General Counsel of America Online, Inc. and General Counsel of Digital City, Inc., a subsidiary of America Online, Inc. I helped draft the first privacy policy for the America Online Service, also one of the first in the industry. In 1996, I was a guest lecturer on protecting the privacy of AOL members at the Association of Attorneys' General Meeting. Prior to working at America Online, I was an Associate at Hogan & Hartson, where my focus was on the representation of high technology clients. I started my legal career at Gibson, Dunn & Crutcher.

Currently the Privacy and Civil Liberties Office is made up of two Senior Counsel from the Office of the Deputy Attorney General, and three experienced Privacy Act attorneys who were formerly with the Office of Information and Privacy. We are in the process of hiring additional staff.

## **II. RESPONSIBILITIES OF THE PRIVACY AND CIVIL LIBERTIES OFFICE**

During my first thirty days at DOJ, we assessed the existing privacy and civil liberties functions at the Department. I met with the Inspector General; the Assistant Attorney General, Office of Legal Policy; Assistant Attorney General, Civil Division; the Chief Information Officer; and the Privacy Officer of the Federal Bureau of Investigation; and many others that had either privacy or civil liberties responsibilities within the Department. At all of these meetings I was welcomed with enthusiasm. I received detailed briefings regarding their privacy and civil liberties efforts. From those meetings we were able to develop an action plan for the Office of Privacy and Civil Liberties.

After meeting with the Chief Information Officer, we decided to centralize the Privacy Impact Assessment (PIA) process. PIAs are required by Section 208 of the E-Government Act for all Federal government agencies that develop or procure new technology involving the collection, maintenance, or dissemination of personally identifiable information; or that make substantial changes to existing technology for managing information in identifiable form. A PIA is an analysis of how personally identifiable information is collected, stored, protected, shared, and managed. (We note that although they are excluded from the statute, we do require PIAs for our national security systems.)

We determined that the PIA process within the Department would be much more effective if all components were working from a standard template with standard guidance. Utilizing some of the aspects of the DHS model, we drafted Official PIA Guidance; a Privacy

Threshold Analysis to determine whether a PIA is required; and a new PIA Template. Next month, we are going to hold a one day training session on PIA preparation and Privacy Act issues with members of the CIO staff and persons within the components who are responsible for Privacy Act issues.

In furtherance of our civil liberties missions, we set up and launched a DOJ Privacy and Civil Liberties Board on April 17, 2006. Representatives of the law enforcement, national security, and other relevant components are represented on the Board. We have subdivided the board into three separate committees: Outreach Committee, Data Committee and the Law Enforcement Committee.

The function of the Outreach Committee is to survey and coordinate existing Departmental outreach efforts with respect to the Arab, Muslim and other ethnic or religious minorities which may be affected by the War on Terrorism. We will also implement additional outreach to these communities as needed. The Data Committee will examine issues related to information privacy within the Department. Its first task will be to respond to recommendations in the April 2006 GAO report entitled *Personal Information Agency and Reseller Adherence to Key Privacy Principles*. Specifically, the committee will analyze the Department's use of information reseller data and propose Departmental policy with regard to such use. Information resellers are companies that collect information, including personal information about consumers, from a wide variety of sources for the purpose of reselling such information to their customers, which includes the Government. The Law Enforcement Committee will focus on law enforcement efforts that might have an impact on civil liberties or privacy. Some members of

the Board sit on multiple committees. The committees will meet once a month, with the entire Board meeting at least twice a year or more often as needed to approve Committee initiatives.

Shortly after I arrived, we started to reach out to privacy advocacy and public policy groups. We have met with representatives from the ACLU, Center for Democracy and Technology, Cato Institute and Heritage Foundation. We have also met with Peter Swire, the former Chief Counselor for Privacy in the U.S. Office of Management and Budget and the Center for Information Policy Leadership at Hunton & Williams LLP. Through these meetings we hope to keep up a dialog with the privacy community.

We have also been active in intergovernmental groups and efforts. We believe that by working together as a group, privacy officers within the Government can utilize each others collective experience. Last week Daniel Suthlerland, Officer for Civil Rights and Civil Liberties at the Department of Homeland Security, hosted an event for privacy and civil liberties officers working in the national security and law enforcement agencies. We are planning to continue these meetings on a monthly basis in order for us to share experiences and ideas. Maureen Cooney, DHS acting Chief Privacy Officer, has asked me to participate at a DHS privacy office workshop in June on Privacy Impact Assessments.

Our office has also been active in advising the Department on information sharing initiatives. While information sharing is an incredibly important initiative for our security, it also involves important privacy and civil liberties issues. We are pleased that the Administration

and the Attorney General has recognized the importance of addressing these issues at the inception of information sharing programs.

Since my arrival, I have co-chaired the President's Information Sharing Environment Guideline 5 Working Group with Alex Joel, the Director of National Intelligence Civil Liberties Protection Officer. The Guideline 5 initiative is in response to the December 16, 2005 Memorandum from President George W. Bush to the Heads of Executive Departments and Agencies, Subject: *Guidelines and Requirements in Support of the Information Sharing Environment*. Guideline 5 of the Memorandum requires, in relevant part, that the Attorney General and the Director of National Intelligence: "(A) conduct a review of current executive department and agency information sharing policies and procedures regarding the protection of information privacy and other legal rights of Americans" and "(B) develop guidelines designed to be implemented by executive departments and agencies to ensure that the information privacy and other legal rights of Americans are protected in the development and use of the ISE, including in the acquisition, access, use, and storage of personally identifiable information." The working group was comprised of representatives of all of the agencies participating in the ISE. The working group is working to develop the guidelines required under the statute. We also look forward to working with the President's Privacy and Civil Liberties Oversight Board on the guidelines.

The Privacy and Civil Liberties Office also oversees the Department's compliance with the Privacy Act of 1974 and plays an active role in ensuring that the Department's law enforcement, litigation, and anti-terrorism missions are carried out in

accordance with its provisions. This is especially evident in our participation in the Department's Law Enforcement Information Sharing Program, in which we serve a vital role in ensuring that information sharing initiatives carried out in our effort to enforce the law are made in a manner that is consistent with the law. We also provide Privacy Act guidance within the Department, both in response to specific inquiries raised by the components and through training programs, drawing on the expertise in Privacy Act case law and analysis that my staff brought to this Office

### **III. CONCLUSION**

Although I have been at DOJ only a short while, my arrival has been greeted with enthusiasm. We have been consulted on numerous initiatives. In the coming year, we hope to launch new efforts, such as more extensive privacy and civil liberties training, that will further the office's mission of protecting the privacy and civil liberties of those who interact with the Department of Justice.